

# THE INCINERATION OF PERSONS IN JIHAD, CRIMINAL PENALTIES AND REPRISALS

A CRITIQUE OF ISIS'S ARGUMENT  
IN LIGHT OF THE SOURCES

by

GIBRIL FOUAD HADDAD

FINAL DRAFT

foreword by

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the Name of God, All-Beneficent, Most Merciful

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**FINAL DRAFT**



## FOREWORD

**G**lory to Allah Who has raised the people of knowledge *to high ranks* (al-Mujādila 11:58) and made it *manifest signs in the chests of those who were given knowledge* (al-‘Ankabūt 29:49)! Blessings and peace on our liegelord Muhammad, the bringer of staggering miracles, who foretold everything to come, and upon his Family and Companions, who unleashed, in the defense of Religion, tongues like razor-sharp swords, and upon whoever followed them of the trustworthy imams and ulema! To proceed: Truly it is part of the immense favor Allah has bestowed upon Muslims that “He made the ulema inheritors of the Prophets,”<sup>1</sup> and that He has made ready in every period, out of such ulema, “those of upright character who will repel from the Religion the distortions of the extremists and the pretenses of the liars.”<sup>2</sup> Among those ulema is the author of this book, Shaykh Gibrīl Fouad Haddad, who has acquired knowledge with an unbroken chain back to the Prophet—upon him blessings and peace—and kept close company with me in my classes for many years in the lands of Shām, adding the pursuit of self-purification to that of knowledge, and joining adornment to renunciation, until he became one of the binding proofs of Allah Most High over humanity and one of His signs proclaiming truth.

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<sup>1</sup> A Prophetic hadith narrated by Abū al-Dardā’ in al-Bukhārī and the *Sunan*.

<sup>2</sup> From a hadith narrated by Abū Hurayra, Abū Umāma, Usāma b. Zayd, Ibn ‘Umar, Ibn Mas‘ūd, Abū al-Dardā’, ‘Alī, Jābir b. Samura and Mu‘adh and graded *ṣaḥīḥ* by Aḥmad and al-‘Alā’i, cf. al- al-Khaṭīb, *Sharaf aṣḥāb al-ḥadīth*, ed. ‘Amr ‘Abd al-Mun‘im Salīm, 2 vols. (Jeddah: Maktabat al-‘Ilm, 1417/1996) 1:67-68 no. 51; Ibn ‘Abd al-Barr, *al-Tamhīd*, introduction; al-‘Alā’i, *Bughyat al-mulāmis fī subā‘iyyāt ḥadīth Mālik b. Anas*, ed. Ḥamdī al-Salāfi (Beirut: ‘Ālam al-Kutub, 1405/1985) pp. 34-35.

He has now confronted the Kharijites<sup>3</sup> of our time, who dubbed themselves the organization of the Islamic State—although they are as alien as can be conceived from the spirit and substance of Islam, and as acutely opposed to its aims and objectives as can be imagined—and has authored this book refuting them on the question of burning by fire, showing with firm proofs that such an act is contrary to the all-clarifying Qur’ān and opposed to the Sunna of the master of Messengers, upon him blessings and peace. In this regard he has cured sickness and quenched thirst; he has brought forth the brightest light and the luminous truth.

I had brought up this issue and analyzed this problem in my book<sup>4</sup> *Refuting ISIS*, which I wrote in Arabic as well as English—somewhat briefly and succinctly, as required by the subject-matter of the book—and in which I addressed the crimes of the “dogs of hellfire.”<sup>5</sup> I had concluded that **exacting revenge from the enemy by burning him with fire is categorically prohibited in Islam**, having been made so by the Prophet—upon him blessings and peace—and that its status was that of an abrogated ruling, as understood by the accomplished experts. The arguments of those who assert that it is allowed are false and rejected. Their minds are

<sup>3</sup> On the sect of the Khawārij see Thomas Sizgorich, *Violence and Belief in late Antiquity: Militant Devotion in Christianity and Islam* (Philadelphia: University of Pennsylvania Press, 2009), pp. 212-225; Hannah Hagemann, *History and Memory: Kharijism in Early Islamic Historiography*, unpub. diss. (Edinburgh, 2014); Keith Lewinstein, *Studies in Islamic heresiography: the Khawarij in two Fīraq traditions*, unpub. diss. (Princeton, 1988); Nathan Spannaus, *The Azāriqa and Violence among the Khawārij*, unpub. thesis (Harvard, 2007); and Sulaymān al-Ghuṣn’s 2009 *al-Khawārij*.

<sup>4</sup> Shaykh Muhammad al-Yaqoubi, *Refuting ISIS: Destroying its Religious Foundations and Proving it has strayed from Islam and that fighting it is an obligation*, 2nd ed. (Herndon, VA: Sacred Knowledge, 2016) pp. 26-28; *Inqādh al-umma: fatwā muṣaṣṣala fī ithbāt anna Dā‘ish khawārij wa-anna qitālahum waḥib*, 5th ed. (Herndon: Sacred Knowledge, 1437/2016) pp. 70-71. On al-Yaqoubi’s book see also below, Chapter 9.

<sup>5</sup> Part of a Prophetic hadith stating, “Kharijites are the dogs of hellfire.” Narrated from Ibn Abī Awfā and Abū Umāma by Ibn Mājah (*Iftitāh, bāb fī dhikr al-Khawārij*), al-Tirmidhī (*Abwāb tafsīr al-Qur’ān, wa-min sūrat Āl ‘Imrān, ḥasan*) and others.

narrow and only reach a limited range. It is necessary, however, to warn that some of the jurists famed for perspicacity have made this very mistake, among them Ibn al-Qāsim (132-191/750-807) the author of the *Mudawwana* (Compilation) on the school of Imam Mālik, whose direct student he was. Following in his trail was Khalīl b. Ishāq (d. 767/1366) in the digest relied upon in the Maliki school and famous as *Mukhtaṣar Khalīl*. Yet Imam Mālik never stated the permissibility of incineration! Only Ibn al-Qāsim conjectured his discourse to signify other than what it meant, and the jurists of Andalusia treated Ibn al-Qāsim's words as if they were the Seven Oft-Recited,<sup>6</sup> so whatever he said was an authoritative reference for jurists and a pillar of reliance in fatwa and juridical rulings. This is but one example among others in which one of the past ulema erred in something which none of the later scholars endorsed in their fatwas, as **the mere fact that some position is mentioned in a book does not mean it is allowed to follow it, nor does it mean that it can be made a fatwa and put into practice.** Then came the followers of ISIS, the Kharijites of this time—complete strangers to the bases of legal inference and absolute ignoramuses in the principles of fatwa and juridical exertion. They just picked and chose, among the sayings of the jurists, whatever suited their sick souls, their feeble wits, and their message built on hatred and vengeance. That is why it is imperative for us to start over the writing of *fiqh*—sacred jurisprudence—in order to suppress the likes of such mistakes, which appeal to dolts.

The author of the present work has thus stepped forward to continue what I had begun and expose what I had left unsaid. He excelled in disposing it in the best order and showed true originality in what he detailed and brought to completion. Therefore, I ask Allah Most High that He reward him in the best way for this rebuttal and clear exposition; that He cause readers of all faiths to benefit from this book; and that He

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<sup>6</sup> A Quranic expression glossed as referring to the Fatiha, the First Chapter.

take unto the fold of His mercy and good pleasure all the martyrs who fell victims to the organization of ISIS. Our last plea is *Glory to Allah, the Lord of the worlds!*

The servant of knowledge  
Shaykh Muhammad al-Yaqoubi

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## تَقْرِيط

لفضيلة العلامة الشيخ محمد أبو الهدى اليعقوبي

الحمد لله الذي رفع أهل العلم ﴿ دَرَجَاتٍ ﴾ ، وجعله ﴿ فِي صُدُورِ الَّذِينَ أُوتُوا الْعِلْمَ ﴾ آيات بيّنات، والصلاة والسلام على سيدنا محمد صاحب المعجزات، الذي أخبر عن كل ما هو آت، وعلى آله وصحبه الذين انتصوا للدفاع عن الدين السنة كالسيوف المرهفات، وعلى من تبعهم من الأئمة والعلماء الثقات.

أما بعد، فإن من فضل الله تعالى على المسلمين أن جعل العلماء ورثة للنبيين، وأن هبّا منهم في كل عصر غُدولاً يَتَفَوَّنَ عَنِ الدِّينِ تَحْرِيفَ الْغَالِيْنَ وَائْتِحَالَ الْمُبْطِلِيْنَ، ومن هؤلاء العلماء مؤلف هذا الكتاب، الشيخ جبريل فؤاد حداد، فإنه أخذ العلم بالسند المتصل إلى النبي عليه الصلاة والسلام، ولازمنا في دروسنا عدّة سنوات في بلاد الشام، وجمع مع العلم التركية، وضمّ إلى التخلية التحلية، فصار من حجج الله تعالى على الخلق، ومن آياته التي تنطق بالحق.

وقد تصدّى لخوارج العصر، الذين يُسَمُّونَ أنفسهم تنظيم الدولة الإسلامية، وهم أبعد ما يكونون عن روح الإسلام وجوهره، وأشدُّ ما يكونون مناقضةً لغاياته ومقاصده، فاللف هذا الكتاب في الردّ عليهم في مسألة التحريق بالنار، مبيّنة بالأدلة الثابتة، أن ذلك مناقض للكتاب المبين، ومخالف لسنة سيد المرسلين صلى الله عليه وسلم، فشفا الغليل، وأروى الغليل، وجاء بالنور اللامع والحق الساطع.

وكنا قد تعرّضنا لهذه المسألة، وحلّلنا هذه المشكلة، في كتابنا في الرد على داعش الذي ألفناه بالعربية والإنجليزية، لكن بشيء من الإيجاز والاختصار، حسب ما يقتضيه موضوع الكتاب الذي تناولنا فيه جرائم كلاب النار. واتهينا إلى أنّ الانتقام من العدو مجزؤه بالنار: حرام في الإسلام، حرّمه النبي عليه الصلاة والسلام، وأنه من المنسوخ، كما

يعرف أهل الرسوخ؛ وحجج القائلين بأنه مباح باطلة مردودة، وعقولهم قاصرة تسير في دوائر محدودة. لكن ينبغي التنبيه، إلى أن هذا الخطأ قد وقع فيه بعض من يوصف من الفقهاء بأنه نبيه، منهم ابن القاسم صاحب المدونة في مذهب الإمام مالك وتلميذه، وعلى خطاه سار من بعده خليل بن إسحاق في المختصر المعتمد في الفتوى في المذهب المالكي، وهو المشهور بمختصر خليل. ولكن الإمام مالكاً لم يقل قط بجواز الحرق بالنار، وإنما حمل ابن القاسم كلامه ما لم يحمله من المعاني، وأخذ فقهاء الأندلس كلام ابن القاسم كآته السبع المثاني، فصار مرجعاً للفقهاء، وعمدة في الفتوى والقضاء، وهذا مثال من الأمثلة التي أخطأ فيها بعض العلماء السابقين، مما لم يفت به أحد ممن جاء بعدهم، وذلك لأن وجود القول في كتاب لا يعني جواز العمل به، ولا إمكان الفتوى به وتطبيقه. إلى أن جاء أتباع داعش من خوارج هذا العصر، وهم غرباء عن قواعد الاستنباط، وحملة بأصول الفتوى والاجتهاد، فجعلوا يتخيرون من أقوال الفقهاء ما يناسب نفوسهم المريضة، وأذهانهم الكلييلة، ورسالتهم المبينة على الكراهية والانتقام. ولذلك فإنه يجب علينا أن نعيد كتابة الفقه من جديد، لحذف أمثال هذه الأخطاء التي قد تتسك بها ذو الفهم البليد.

فجاء المؤلف ليتابع ما ابتدأناه، ويكشف الستر عما أهملناه، فأحسن فيما نضده، وأبدع فيما فصله وحزره، فأسأل الله تعالى أن يجزيه خير الجزاء، على هذا الرد والبيان، وأن ينفع بهذا الكتاب القراء من جميع الأديان، وأن يتغمّد الشهداء الذين سقطوا على أيدي تنظيم داعش بالرحمة والرضوان. وآخر دعوانا أن الحمد لله رب العالمين.

خادم العلم الشريف

محمد يعقوبي

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## ABBREVIATIONS

References to the two *Ṣaḥīḥs*, the four *Sunan*, al-Dārimī's *Sunan*, Mālik's *Muwattaʿ* and 'Iyād's *al-Shifā* only cite the *kitāb* and *bāb* for ease of access rather than a particular edition, unless otherwise noted.

- A = Aḥmad b. Ḥanbal, *Musnad*, al-Arnā'ūṭ ed.  
AD = Abū Dāwūd, *Sunan*  
AR = 'Abd al-Razzāq al-Ṣan'ānī, *Muṣannaf*, A'zamī ed.  
B = al-Bukhārī, *Ṣaḥīḥ*  
BQK = al-Bayhaqī, *al-Sunan al-kubrā*, al-Ma'rifa ed.  
BQM = al-Bayhaqī, *Ma'rifat al-sunan wal-āthar*, Qal'ajī ed.  
BQS = al-Bayhaqī, *al-Sunan al-ṣuḡhrā*, Abū al-Ṭayyib ed.  
D = al-Dāraquṭnī, *Sunan*, al-Arnā'ūṭ ed.  
F = *Fath al-Bārī* by Ibn Ḥajar, al-Ma'rifa ed.  
IASh = Ibn Abī Shayba, *Muṣannaf*, 'Awwāma ed.  
IH = Ibn Ḥazm, *al-Muḥallā*, al-Muniriyya ed.  
IM = Ibn Mājah, *Sunan*  
IQ = Ibn Qudāma, *al-Mughnī*, al-Turkī ed.  
M = Muslim, *Ṣaḥīḥ*  
MZ = al-Haythamī, *Majma' al-zawā'id*, al-Qudsi ed.  
N = al-Nasā'ī, *Sunan*  
SM = Sa'īd b. Manṣūr, *Sunan*, al-A'zamī ed.  
ṬMK = al-Ṭabarānī, *al-Mu'jam al-kabīr*, al-Salafi ed.  
ṬTĀ = al-Ṭabarī, *Tahdhīb al-āthār: musnad 'Alī b. Abī Ṭālib*, Shākir ed.  
U = *al-Umm* by al-Shāfi'ī, 'Abd al-Muṭṭalib ed.



## Preamble

# CONTEXTUALIZING THE CRIME OF INCINERATION AND THE SIDE ISSUES OF APOSTASY AND SODOMY LAWS

*“We narrate that the Prophet—upon him blessings and peace—forbade that anyone be tormented with the torment reserved for Allah. So this is what we hold; and we do not burn anyone, whether alive or dead.”*

Al-Shāfi‘i.

*“Whoever kills by fire is not to be killed by it in turn.”*

Ibn al-Mājishūn.

*“As for burning an unbeliever after he is made prisoner and burning an apostate, the scholars universally consider it impermissible.”*

Al-Baghawī.

*“Once the enemy are overpowered, it is not permissible to burn them with fire. There is no dispute over this that we know of.”*

Ibn Qudāma.

**O**n February 3, 2015 a highly cinematic video emerged online showing the 26-year-old Jordanian airforce pilot Muath Safi Yousef Al-Kasasbeh, reportedly downed over Raqqa Province in Syria on 24 December 2014 and captured by Islamic State of Iraq and *Shām* affiliates (ISIS or IS), identifying himself by name and rank, describing military facts—such as precise mission details, aircraft technology and air bases used by Arab and Western anti-IS coalition members—then being burnt to death in an open-air location in front of IS onlookers. The video was put online

under the title “Healing the Believers’ Chests”<sup>1</sup> and was denounced as innovatively gruesome and “a shocking provocation of the world with a new type of savagery;”<sup>2</sup> as a justification for Islamophobia;<sup>3</sup> and as a photoshop hoax by the former Mufti of Egypt Ali Gomaa, who viewed it as anti-Islam propaganda, and some Western analysts, who viewed it as an IS recruiting tool.<sup>4</sup> Another burning video was released on December 22, 2016, this time of two Turkish prisoners of war, and elicited similar reactions with the deputy prime minister of Turkey again suggesting a hoax.<sup>5</sup>

<sup>1</sup> <http://www.badiranet.com/up/videos/daach.mp4> (the title is mentioned at 3'). The video has been posted in full by Fox News ever since: <http://video.foxnews.com/v/4030583977001/warning-extremely-graphic-video-isis-burns-hostage-alive>. All websites are cited as of 1 August 2016 unless otherwise noted. The title is a reference to the Quranic verse, *Fight them! Allah shall punish them at your hands, and rout them, and give you victory over them, and heal the chests of a nation of believers* (al-Tawba 9:14), a verse that calls for the fighting of those of the Meccans who had broken their treaty with the Muslims in the year 8/629.

<sup>2</sup> <http://www.bbc.com/news/world-middle-east-31129416> and <http://www.raqqa-sl.com/?p=763>. Another outlet described the video as “a first of its kind in the way Daesh [another name for IS] treats its hostages” <http://www.badiranet.tn/?p=1818>.

<sup>3</sup> <http://www.raymondibrahim.com/2015/02/03/fatwa-islamic-state-justifies-burning-pilot-alive/> and the article “Muslims! Is burning a penalty which Islam affirmed or prohibited?” The intended answer is the first: [ahewar.org/debat/show.art.asp?aid=454037](http://ahewar.org/debat/show.art.asp?aid=454037).

<sup>4</sup> <http://www.youm7.com/story/0000/0/0/-/2055503>; <http://www.thomaswictor.com/the-jordanian-pilot-was-not-burned-alive/>; <http://21stcenturywire.com/2015/02/08/misfire-the-burning-of-captured-pilot-kasasbeh-staged-propaganda-coalition-airstrikes/>; and <https://leaksource.info/2015/02/04/jordanian-pilot-kasasbeh-burned-alive-by-islamic-state-jordan-executes-is-requested-prisoner-rishawi-in-response>. The video’s “terror technology” matched the graphics used in the popular video game “Grand Theft Auto 5”: <http://assabeel.net/local/item/90150-الصدور-الدلالات-النفسية-لفيلم-رعب-بتقنية-90150-hd>

<sup>5</sup> <https://www.yahoo.com/news/turkey-says-no-confirmation-burned-soldiers-claim-152638830.html> as of 28 December 2016. For more on the 2016 video see analysis and documentation below, chapter 8.

A fourth aspect received little analysis beyond journalistic articles and social media comments,<sup>6</sup> namely the two videos' ostensibly Islamic argument, encapsulated towards the end of the 2015 video in a one-line quotation attributed to the maverick Syrian theologian Aḥmad b. 'Abd al-Ḥalīm al-Ḥarrānī (661-728/1263-1328), known as Ibn Taymiyya, and in a single Quranic verse on retaliation in the 2016 video, as a claim for the licitness of the publicized burning alive of war captives as tit-for-tat reprisals and for deterrence, an argument developed in prior and concurrent pro-IS literature online and in print.

This work identifies, situates and assesses such arguments within the context of the early sources, specifically the Qur'an in over 40 verses and more than 70 Hadiths (including non-Prophetic reports), as well as Sunni juristic scholarship, all from the strictest perspectives of Islamic hadith scholarship and jurisprudence. It will address some of the questions these arguments raise in relation to certain prohibitive cautions in the conduct of jihad—specifically the aspect of talion reprisals (*qisās, qawad*)—and the application of criminal penalties (*ḥudūd*), such as the several Quranic verses urging restraint in retaliation and the several sound hadiths that prohibit the use of fire against human beings. Answers will be proposed to the questions whether, in light of such evidence, the Prophet at any time legitimized live burning or ratified its permissibility in any way; whether any of his Companions actually used or advocated such an act in war or in peace; whether later jurists allowed the burning of enemies as a retaliatory and/or deterrent measure in the laws pertaining to the conduct of war and criminal penalties; and whether such an act was ever

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<sup>6</sup> E.g., David Kibble, "Beheading, Raping, and Burning: How the Islamic State Justifies Its Actions," *Military Review* (March-April 2016) pp. 28-35; <https://www.washingtonpost.com/news/morning-mix/wp/2015/02/04/the-chilling-reason-the-islamic-state-burned-a-jordanian-pilot-alive/>; [https://www.reddit.com/r/exmuslim/comments/3bzn0g/ahkam\\_on\\_using\\_fire\\_as\\_qisas\\_clearing/](https://www.reddit.com/r/exmuslim/comments/3bzn0g/ahkam_on_using_fire_as_qisas_clearing/); <http://almakhazin.com/2015/02/09/isis-burning-pilot-alive-not-qisas/>

meant as a live execution, or was to be applied only after death, as an exemplary desecration.

A reader raised apprehensions that this book, particularly chapters Five and Six, might be misconstrued to suggest that “if apostates and sodomites are to be killed anyway, burning a body whether alive or dead is simply irrelevant” and that “it will be used by the ill-intentioned to say: while Muslims are against burning people, their Prophet and his closest companions okayed the killing of gays and people who decided they didn’t want to be Muslim anymore.” The same reader feared the book might be viewed, because of these two chapters, as “confirming that Islam *has to* kill certain people due to their personal preferences and not because of some crime.... Sometimes, some things are best left unsaid.” Another reader said that while the chapters

offer a sense of completeness to the book, they will trigger a whole set of discussions. People have no frame of reference for what is discussed there. Rather than focus on the argument being presented—the illegitimacy of burning—they will instead focus on lapidation and decapitation, etc., interrogate Muslims whether they believe this should happen, and [adduce] it to people inadequately prepared to receive even a well-presented answer. ... It is possible to retain the argument against burning without discussing entirely what is in those chapters.

Understandable as these cautions might be, this work is not about the rationale of capital punishment in Islam and its modalities,<sup>7</sup> nor is it a critique of the modern-world relevance

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<sup>7</sup> On these issues see Muhammad Iqbal Siddiqui, *The Penal Law of Islam* (Lahore: Kazi, 1979); Muhammad Cherif Bassiouni, ed., *The Islamic Criminal Justice System* (New York: Oceana, 1982); Matthew Lippman et al., *Islamic Criminal Law and Procedure: An Introduction* (New York: Praeger, 1988); “Punishment under Islamic Law,” in Hong Lu and Terance D. Miethe, *Punishment: A Comparative Historical Perspective* (Cambridge and New York:

of the statutory/criminal penalties known as *ḥudūd*.<sup>8</sup> Nevertheless, this writer's understanding is that **in the Prophetic Hadith, capital apostasy is simply not referred to nor conceptualized as a private choice that concerns an individual exclusively, but as a treasonable public challenge of the Muslim polity**, evinced in its definition as *يَخْرُجُ مِنَ الْإِسْلَامِ يُجَارِبُ اللَّهَ وَرَسُولَهُ* "leaving Islam, fighting Allah and His Messenger,"<sup>9</sup> *التَّارِكُ لِدِينِهِ الْمُقَارِئُ لِلْجَمَاعَةِ* "leaving one's religion, parting with the congregation."<sup>10</sup> A third report states even more explicitly,

وَاللَّهُ مَا قَتَلَ رَسُولُ اللَّهِ ﷺ أَحَدًا قَطُّ إِلَّا فِي إِحْدَى ثَلَاثِ خِصَالٍ: رَجُلٌ قَتَلَ بِجَرِيرَةٍ نَفْسَهُ فَقُتِلَ، أَوْ رَجُلٌ زَنَى بَعْدَ إِحْصَانٍ، أَوْ رَجُلٌ حَارَبَ اللَّهَ وَرَسُولَهُ وَارْتَدَّ عَنِ الْإِسْلَامِ.

"The Prophet—by Allah!—never killed anyone except for one of three reasons: foul murder; adultery after

Cambridge University Press, 2005) pp. 155-193; and the works by Anwarullah and Oudah referenced further down, in Chapter 2.

<sup>8</sup> For recent attempts to rethink *ḥudūd* legitimacy and applicability see Abdullah and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Burlington: Ashgate Publications, 2004); the ulemaphobic 2005 essay at <http://tariqramadan.com/an-international-call-for-moratorium-on-corporal-punishment-stoning-and-the-death-penalty-in-the-islamic-world>; Muhammad Hashim Kamali's 1997 *Freedom of Expression in Islam*; Abdullah Saeed's 2006 *Interpreting the Qur'an: Towards a Contemporary Approach*. Rethinkers tend to misrepresent ulema approaches as divorced of contextualization and themselves as the torch-bearers of a more relevant, "progressive" Islam although they often lack rigor in sourcing and interpretation. Contra: see Ahmad Rashād Ṭāḥūn, *Hurriyyat al-ʿaqida fil-shariʿat al-Islāmiyya* (Cairo: Iṭrāk lil-Nashr wal-Tawzīʿ, 1998); Muḥammad Saʿīd al-Būṭī, *al-ʿUqūbāt al-Islāmiyya wa-ʿuqdat al-tanāquḍ baynahā wa-bayna mā yusammā bi-ṭabīʿat al-ʿaṣr* (Kuwait: al-Majlis al-Waṭanī, 2002); and critiques of Kamali at [https://traditionalislamblog.wordpress.com/2011/08/11/prof-hashim-kamali-s-religious-pluralism-reconsidered](https://traditionalislamblog.wordpress.com/2011/08/11/prof-hashim-kamali-s-religious-pluralism-reconsidered/); and [http://www.livingislam.org/k/cfei\\_e.html](http://www.livingislam.org/k/cfei_e.html)

<sup>9</sup> Narrated from ʿĀ'isha by N (*Taḥrīm al-damm, ṣalb*), AD (*Ḥudūd, al-ḥukm fī-man irtadd*) and others.

<sup>10</sup> Narrated from Ibn Masʿūd by B (*Ḍiyāt, qawḍ Allāh taʿālā* "anna al-naḥṣa bil-naḥṣ"), M (*Qasāma, mā yubāḥ bihi damu al-Muslim*) and others.

marriage; or fighting Allah and His Prophet together with apostasy from Islam.”<sup>11</sup>

The above position is nothing new: al-Ṭahāwī equated apostasy with enmity against the state (*ḥarāba*); Ibn al-Mulaqqin, commenting on the definition of apostasy as “leaving one’s religion, parting with the congregation,” said an apostate does so “integrally, while Kharijites and highway robbers do so partially.”<sup>12</sup> Others explicitly equated apostasy with revolution, high treason and social disintegration.<sup>13</sup> The late Iraqi-American Azharite legal theorist Ṭāha al-‘Alwānī published one of its most articulate expositions in recent times, *No Compulsion in Religion: The Problematic of Apostasy and Apostates*.<sup>14</sup>

<sup>11</sup> Narrated in *mursal* (missing the Companion-link) mode by the Ṭābi‘ī Abū Qilāba al-Jarmī by B (*Ḍiyāt, qasāma*); my emphasis.

<sup>12</sup> Ibn al-Mulaqqin, *al-Mu‘īn ‘alā tafahhūm al-Arba‘īn*, ed. Daghash al-‘Ajāmī (Kuwait: Maktabat Ahl al-Athar lil-Nashr wal-Tawzī‘, 1433/2012) p. 205, citing Aḥmad al-Qurṭubī’s *al-Mufhim li-mā ushkila min talkhiṣ kitāb Muslim*.

<sup>13</sup> Al-Ṭahāwī in *F* (12:269) on the position that the apostate is killed on the spot: *حكم من ارتد عن الاسلام حكم الحرابي الذي بلغته الدعوة*: “the status of one who recants from Islam is the same as that of an enemy of the state (*ḥarbī*) who is cognizant of the call to Islam;” Ibn Taymiyya, *Majmū‘at al-fatāwā li-Shaykh al-Islām Ibn Taymiyya*, ed. ‘Amīr al-Jazzār and Anwar al-Bāz, 3rd ed., 37 vols. (al-Manṣūra, Egypt: Dār al-Wafā’, 1426/2005) 20:59. Maḥmūd Shaltūt, *al-Islām ‘aqida wa-sharī‘a*, 17th ed. (Cairo: Dār al-Shurūq, 1411/ 1991) p. 281; Sayyid Sābiq, *Fiqh al-Sunna*, 3 vols. (Cairo: al-Fatḥ lil-‘Ilām al-‘Arabī, n.d.) 2:290-291. Kamāl al-Dīn Qārī, *al-Ridda an al-Islām* (Damascus: Markaz al-Rāya, 1426/2005) pp. 293-366; and Shī‘ī authorities in Ḥusayn al-Khiṣhn, *al-Fiqh al-jinā‘ī fil-Islām: al-ridda namūdhan* (N.p.: Mu‘assasat al-Intishār al-‘Arabī, n.d.) pp. 23-34, 109-112. Yaqoubī, *Inqādh* (pp. 120-122) lists more hadiths treating revolt as apostasy.

<sup>14</sup> al-‘Alwānī, *Lā ikrāha fil-dīn: Ishkāliyyat al-ridda wal-murtaddīn* (Cairo: Maktabat al-Shurūq al-Dawliyya, 2003); English version: Taha Jabir Alalwani, *Apostasy in Islam: A Historical and Scriptural Analysis*, trans. Nancy Roberts (Herndon, VA: International Institute of Islamic Thought, 2011); see, e.g., pp. 1-2 and 65. The work was predictably pilloried in Wahhabi rebuttals such as ‘Abd Allāh Ramaḍān Mūsā, *al-Radd ‘alā al-Qaraḍāwī wal-Juday‘ wal-‘Ukwānī* (Dahūd, Iraq: al-Athariyya lil-Turāth, 2009) and Ṣāliḥ ‘Alī al-‘Umayrīnī, *al-Ridda bayn al-ḥadd wal-ḥurriyya* (Riyadh: Dār al-Tadmuriyya, 1434/2013). ‘Alwānī’s book, to be sure, is marred by flaws, but is nevertheless essential reading on the issue.

In light of the above three explicit hadithic stipulations and the commentary literature, it is strange to find it objected that the statuting of apostasy as a Muslim's politicized high treason rather than as his or her personal choice to recant "has no precedent among the jurists."<sup>15</sup> This claim was rebutted in no uncertain terms by the late Syrian scholar Muḥammad Sa'īd al-Būṭī in a 2012 fatwa.<sup>16</sup> That it certainly had precedents among the jurists is glaring in the fact that many of the books of jurisprudence and Hadith expound the rulings and proof-texts that pertain to apostates in the sections on just war (*jihād*), international relations (*siyar*), or rebels (*bughāt*) rather than those on statutory penalties (*ḥudūd*).

It would be anachronism for such precedent to be couched in terms of separation of church and state. Historically, the capital ruling on apostasy was equated from inception with an imperative of communal self-preservation against disintegration and was only of late demonized as coercive justice against freedom of thought. The three patent hadiths cited above to that effect are, moreover, congruent with the propounding of free choice and principled rejection of coercion expressed in verse after verse of the Qur'ān in the matter of embracing the religion.<sup>17</sup> It is in this spirit that the Qur'ān states, *There is no compulsion in religion: truth stands clear from error* (al-Baqara 2:256), and if your Lord willed, those on earth would have

<sup>15</sup> Cf. Ṭāḥūn, *Hurriyya* (p. 374) and the Mauritanian scholar 'Abd Allāh b. Bayyih in his gentle critique of al-'Alwānī:  
<http://www.eltwheh.com/vb/showthread.php?11628->

"تعليق م- العلامة-عبد-الله-بن-بيه-على-كتاب-لا-اكره-في-الدين-اشكالية-الردة-والمرتدين"

<sup>16</sup> حد الردة موجود وثابت في الشريعة الإسلامية، ولكن موجب الحد ليس مجرد الكفر بعد الإسلام، وإنما هو (عند جمهور الفقهاء) بسبب ما تتضمنه ردة المرتد من إعلانه الحراية على المسلمين، كما كان شأن المرتدين عن الإسلام بعد وفاة رسول الله، فقد أعلنوا من خلال ردتهم الحرب على المسلمين.

[http://naseemalsham.com/ar/Pages.php?page=readFatwa&pg\\_id=36468&back=8928](http://naseemalsham.com/ar/Pages.php?page=readFatwa&pg_id=36468&back=8928)

<sup>17</sup> As masterly demonstrated by Shaykh Maḥmūd Shaltūt (1893-1963) in his *al-Qur'ān wal-qitāl* (Qur'ān and fighting), which has received several English translations.

believed—all of them to the last one; are you going to compel people to become believers? (Yūnus 10:99). Ibn ‘Abbās, al-Ṭabarī and the majority of the scholars deemed these verses *muḥkam* (unambiguous and unabrogable for all time), a coherent position both transmission-wise and content-wise.<sup>18</sup> Their human limited-liability meaning is confirmed by no less than 26 additional verses.<sup>19</sup> Al-Būṭī also remarked that individual “conscientious” apostates were historically let be—even Ibn al-Rāwandī (d. 293/906 or 298/ 911)—and were suppressed only when they formed a threat to the polity, as in the so-called Apostasy Wars.<sup>20</sup> All this is a far cry from the suggestion that Islam, whether as a religion or as a law, condones the killing of “people who decided they didn’t want to be Muslim anymore.”

As for anti-sodomy laws, they did not bear on “the killing of gays” but rather on the criminalization of anal (and, in Judeo-Christian tradition, oral<sup>21</sup>) intercourse regardless of sexual

<sup>18</sup> See ‘Alam al-Dīn al-Sakhāwī, *al-Ṭawd al-rāsikh fil-mansūkh wal-nāsikh* in his *Jamāl al-qurrā’ wa-kamāl al-igra’*, ed. ‘Alī Ḥusayn al-Bawwāb, 2 vols. (Mecca: Maktabat al-Turāth, 1408/1987) 1:269; Muṣṭafā Zayd, *al-Naskh fil-Qur’ān: dirāsa tashrī‘iyya tārikhiyya naqdiyya*, 3rd ed., 2 vols. (al-Manṣūra: Dār al-Wafā, 1408/1987) 2:512 no. 705; Makkī al-Qaysī, *al-Idāh li-nāsikh al-Qur’ān wa-mansūkhīh*, ed. Aḥmad Farḥāt (Jeddah: Dār al-Manāra, 1406/1986) pp. 193-194; Ibn al-Jawzī, *Nawāsikh al-Qur’ān*, ed. Muḥammad Ashraf Malibārī (Medina: al-Jāmi‘a al-Islāmiyya, 1404/1984) 217-220, 373; Muḥammad b. ‘Alī al-Ghāmīdī, *al-Marwiyyāt wal-āwā’ fil-naskh min khilāl Tafṣīr Ibn Jarīr al-Ṭabarī*, unpub. diss. (Mecca: Jāmi‘at Umm al-Qurā, 1420/ 1999) pp. 153-154; and Muṣṭafā Ibrāhīm al-Zalamī, *al-Tibyān li-raḥ’ ghumūd al-naskh fil-Qur’ān* ([Sulaymāniyya:] Nashr Iḥsān, 2014), pp. 141-143.

<sup>19</sup> See Zayd, *Naskh* (1:424-429 nos. 584-587), on the “Verse of the Sword.” Al-‘Alwānī numbers them at “more than 200 verses.” *Apostasy in Islam* (p. 130).

<sup>20</sup> See <https://www.youtube.com/watch?v=EonUAQ3ztgM> as of 29 December 2016. Ibn ‘Aqīl said, “I wonder how he [Ibn al-Rāwandī] never got killed.” It was also said he repented before death. See al-Dhahabī, *Tārikh al-Islām wa-wafayāt al-mashāhīr wal-a‘lām*, ed. ‘Umar ‘Abd al-Salām Tadmūrī, 2nd ed., 53 vols. (Beirut: Dār al-Kitāb al-‘Arabī, 1410/1990) 22:85-88.

<sup>21</sup> Particularly in the United States: *Encyclopedia of Crime & Justice*, ed. Joshua Dressler et al., 4 vols. (New York: Macmillan Reference USA, 2002) 4:1470b, entry “Sex Offenses: Consensual,” par. “Sodomy” and *Encyclopedia of Criminology*, ed. Richard A. Wright and J. Mitchell Miller, 3 vols. (New York: Routledge, 2005) 3:1723b, entry “Victimless Crime.”



orientation.<sup>22</sup> In Islamic law, as this book shows (cf. chapter 6), they applied to married couples, *a fortiori* outside of wedlock, *a fortiori* same-sex couplings, including tribadism.<sup>23</sup> Sodomy as a capital offense is a Levitical law that carried the death penalty in Europe until the second half of the 19th century.<sup>24</sup>

Its decriminalization in the West began after the French Revolution<sup>25</sup> (together with that of blasphemy) although it remained a crime in England and the United States for two

<sup>22</sup> Even if, in the West, “the practical consequences of the law are limited to same-sex activity .... despite their apparent applicability to heterosexuals.” *Encyclopedia of Crime & Justice* (4:1470b-1471a).

<sup>23</sup> “In ecclesiastical law *sodomy* typically referred to a vague, sometimes comprehensive category of sexual practices that lack pro-natal objectives, including, for example, nonreproductive heterosexual acts and bestiality, as well as homosexual practices.” *Encyclopedia of Crime & Justice* (2:798b, entry “Homosexuality and Crime”). In reality the language was never so genteel but included terms such as “the detestable and abominable crime against nature” in its descriptions, cf. *ibid.* (4:1470b, entry “Sex Offenses: Consensual,” par. “Sodomy”) and Peter Damian’s *Book of Gomorrha*.

<sup>24</sup> “If a man lies with a male as with a woman, both of them have committed an abomination; they shall surely be put to death; their blood is upon them” (Lv 20:13). The effort to recast the homosexual ethos as central rather than abhorrent to Western culture (in the neo-Renaissance spirit of Werner Jaeger’s *Paideia: The Ideals of Greek Culture*, for example) shows an odd distantiation from the Israelite heritage so as to squarely blame not merely Christianity but specifically Roman Catholicism for the anti-homosexual tradition: “The roots of the political and philosophical traditions of the West are in a society deeply affirmative of homosexual relations of the mentor-acolyte model.... Yet the modern Western tradition has suppressed, denied, and appropriated this homoerotic heritage consigning it to sin, sickness, or crime. The gradual shaping and consolidation of Christian doctrines into the canon law of the Western church articulated by medieval theologians, and the propagation and enforcement of these views by the Roman Catholic Church from the twelfth to fourteenth centuries and onward replaced the heroic friendships valued by the ancients with the idea of the *sodomite*.” *Encyclopedia of Crime & Justice* (2:798b). Of similar relativism is the idea that homosexuality—as a term and as a concept—is a 19th-century invention:” *Encyclopedia of Criminology* (2:704a and 705a, entry “Homosexuality”). Cf. Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago : University of Chicago Press, 2005).

<sup>25</sup> See entry “Code pénal de 1791,” <http://dictionnaire.sensagent.leparisien.fr/>

more centuries, until the 1957 *Wolfenden Report*,<sup>26</sup> the ensuing Model Penal Code in the US and Sexual Offences Act Amendment in the UK, and finally the 1973 American Psychiatric Association's demedicalization of homosexuality (in the sense of same-sex sexual activity), no longer even defined as a disease—as Freud had done—much less as a sin or a crime.<sup>27</sup> Still, in the US, “approximately twenty sodomy statutes remained on the books at the close of the twentieth century.”<sup>28</sup> Even as recently as in 2013, when a Baton Rouge representative filed a bill that would repeal the state of Louisiana's unenforceable anti-sodomy law, the bill was voted down as counter to the state's values.<sup>29</sup> The expectation that, despite the lack of such religiocidal moments as 1789 and its aftermath in Islamic civilization and the intensely text-and-consensus-centric nature of Islamic legal thought, Islamic morality should censor its proof-texts and history so as to appear to sanction sodomy as “personal preference and not some crime” once again screams anachronism—and globalism.

More to the point of this book, burning a human being alive or dead can never be made “simply irrelevant” by other issues, because the act says too much about the authors of such an act as a community, as a nation and as a civilization. To conclude, four aspects need to be kept in mind for a

<sup>26</sup> Great Britain, Committee on Homosexual Offences and Prostitution, *The Wolfenden Report* (New York: Stein and Day, 1963).

<sup>27</sup> American Law Institute, *Model Penal Code: Proposed Official Draft* (Philadelphia: The Institute, 1962); *Sexual Offences Act Ch. 60* (London: Her Majesty's Stationary Office, 1967); “It was not until the American Psychiatric Association removed homosexuality from its Diagnostic and Statistical Manual of psychiatric disorders in 1973 that it ceased to be defined as a mental ailment.” *Encyclopedia of Criminology* (2:705a).

<sup>28</sup> *Encyclopedia of Crime & Justice* (4:1470b). “Until 1961, adult consensual sodomy was illegal everywhere in the U.S. In 2001, it remained criminal in 17 states. Out of those, four (Arkansas, Kansas, Oklahoma, and Missouri) criminalize only same-sex sodomy.” *Encyclopedia of Criminology* (3:1723b, entry “Victimless Crime”).

<sup>29</sup> <http://www.usatoday.com/story/news/nation/2014/04/21/12-states-ban-sodomy-a-decade-after-court-ruling/7981025/>

proper understanding of the book at hand with regard to the rest of the two readers' reservations.

First, misunderstanding regarding the subject-matter of a book and its objectives is unavoidable. It is beyond the author's power to preclude it. Decontextualization has long been a favored device of demagoguery and demonization of the other, and now rules supreme from the lairs of IS to the bandwidths of the internet, from pseudo-scholarship to fake news. The task of not facilitating it for "the ill-intentioned," "the nastiest elements," or Islamophobes who might want to misuse these contents or claim they lend legitimacy to criminals, is not achieved through the concealment of documentation but through its recontextualization and through clarifications such as this disclaimer and the subtitle of this book. If "people have no frame of reference for what is discussed," it is hoped that this contribution will help fill such a gap.

Second, this book is a methodical, comprehensive and critical look at the evidence on the specific single issue mentioned in the title and presented in the first three paragraphs of this preamble. It is not about the status of apostates and sodomites in the Shari'a, nor about misapplications of Shari'a law or misguided verdicts of execution invoking that status, all of which predate IS. To address the reality of such injustices or the proper understanding of the entire administration of justice with regard to the early textual evidence is beyond our scope.

Third, this book is not intended for the general public. The subject matter is the raw textual evidence that would serve to define the boundaries of some of the toughest martial, judiciary and moral legal rulings imaginable, and it is meant as an exposé of a specific claimed application of them for the deviant criminal pathology that it is. It began as a 3,000-word

online reply to a Muslim questioner<sup>30</sup> meant to address a specific fear that such is part of Islam when it is not; it is not out to address every other fear as well because that is another story for another day. The methodology is history and hadith criticism. It is intended as a training-tool and a reference-work for a specialized audience, to be distilled by the latter to their own non-specialized circles. It is a book ulema will grasp and from which it is hoped academics can benefit, while many will find it indigestible. Only its conclusions are intended for general consumption; however, on their own, they would remain unsubstantiated, as they build on the entire book.

Last, chapters 5 and 6 clinch the positive claims made in all the previous chapters that burning is impermissible, by additionally (i) showing that burning was never the practice; (ii) showing the inclusion of even post-mortem burning among proscribed and reprehensible acts; (iii) tackling the reports on Abū Bakr al-Ṣiddiq and ‘Alī b. Abī Ṭālib to that effect; (iv) showing that their decisions in this respect were not viewed as the indisputable enforcement of a “divine ruling conveyed by the Prophet” (*ḥukm tablighī*) but as discretionary governance (*siyāsa shar‘iyya*) and as the conduct of state (*imāma kubrā*). To remove these two chapters would not only obscure the relevant body of evidence connected to the title of the book but also weaken the logic of the whole with regard to those precious points. While on the surface “it is possible to retain the argument against burning without discussing entirely what is in those chapters,” it would in reality constitute a mortal flaw to do so, because the reports and deviant claims these chapters thoroughly put to rest would then remain adduceable and harmful, and they could still be invoked against the argument of the whole book.

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<sup>30</sup> [http://eshaykh.com/halal\\_haram/islam-and-burning-people-as-punishment/](http://eshaykh.com/halal_haram/islam-and-burning-people-as-punishment/) as of 20 December 2016, originally posted in July of the same year.